



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

<b>Case Reference</b>	:	CHI/29UQ/LDC/2023/0057
<b>Property</b>	:	54/55 Mount Ephraim, Tunbridge Wells, Kent, TN4 8BB
<b>Applicant</b>	:	Temhouse Maintenance Ltd
<b>Representative</b>	:	Alexandre Boyes
<b>Respondent</b>	:	Mrs Jacqueline Charlton (Flat 54a) and the other 7 leaseholders
<b>Representative</b>	:	(Of Mrs Charlton) Mrs Lois Woodhouse and Mr Justin Woodhouse
<b>Type of Application</b>	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
<b>Tribunal Member</b>	:	D Banfield FRICS
<b>Date of Decision</b>	:	27 July 2023

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**DECISION**

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The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works comprising the installation of an electrically operated fire alarm.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The Applicant must send copies of this determination to the lessees.

## **Background**

1. The Applicant sought dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received by email on 12 April 2023.
2. The property is described as:

*“a pair of semi-detached houses. It consists of eight flats in total, and the two lower ground floor flats have separate entrances at the rear of the property. The ground, first and second floor flats in each house share a communal ground floor entrance, hallway and stairway.”*
3. The Applicant explained that:

*“Local authority have completed an assessment of fire safety upgrading work and have requested we install an electrically operated fire alarm.”*

*Section 20 has not yet started as we would like work to commence as soon as possible.*

*We feel it is necessary to commence with these works ASAP due to Fire Safety.”*
4. The Tribunal considered in Directions dated 19<sup>th</sup> May 2023 that the application must be dealt with as a matter of urgency. They identified that the only issue was whether dispensation from statutory consultation was reasonable and matters in respect of recovery through the service charge could be subject to an application under section 27A of the Landlord and Tenant Act 1985.
5. It was also said that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objects.
6. The Tribunal sent a copy of the application, the Directions and a pro-forma reply form indicating whether the application was opposed and whether an oral hearing was required.
7. The Tribunal made further directions on 19 June 2023.
8. Three responses were received one of which initially opposed the application and required an oral hearing. By an email on 26 June 2023 the objection to both application and hearing the matter on paper was withdrawn.
9. The Tribunal therefore proceeds to determine the application on the papers and without objection from the lessees.

10. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the application remained unchallenged.

## **The Law**

11. The relevant section of the Act reads as follows:

S.20 ZA Consultation requirements:

Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

12. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following.
  - a. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - b. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
  - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
  - e. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
  - f. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
  - g. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which

fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

- h. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **Evidence**

- 13. The Applicant's case is set out in paragraph 3 above.

### **Determination**

- 14. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with those requirements. Guidance on how such power may be exercised is provided by the leading case of Daejan v Benson referred to above.
- 15. No objections have been received. No prejudice has been identified by the Lessees and as such the Tribunal is prepared to grant the dispensation required.
- 16. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works comprising the installation of an electrically operated fire alarm.
- 17. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 18. The Applicant must send copies of this determination to the lessees.

D Banfield FRICS  
27 July 2023

### RIGHTS OF APPEAL

- 1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application

by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.